

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-64-E - ORDER NO. 89-533✓
MAY 19, 1989

IN RE: Berkeley Electric Cooperative, Inc.,)	
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vs.)	ORDER
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South Carolina Electric & Gas Company,)	
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rule to Show Cause requesting that this Commission direct South Carolina Electric & Gas Company (SCE&G) to show cause why it should not be required to immediately cease and desist from any negotiations to obtain service rights, rights-of-way, and/or easements, and/or from any construction of electrical facilities for the distribution of electricity and provision of electrical service into the areas located within territories that are assigned by this Commission to Berkeley, whether or not annexed by any municipality in the area referred to in the Petition, specifically, Johns Island, County of Charleston, State of South Carolina, until the Commission, after hearing, rules on the merits of this complaint.

Berkeley Electric Cooperative, Inc. (Berkeley) and the Intervenor, The Electric Cooperatives of South Carolina (ECSC),

noticed the deposition of various witnesses including employees of SCE&G involved in right of way acquisition and requested this Commission to issue subpoenas duces tecum for those individuals to produce certain documents, records and materials. This Commission issued the subpoenas for the depositions held on Monday, May 8, 1989 and Friday, May 12, 1989. On Friday, May 5, 1989, SCE&G filed with the Commission a Motion for a Protective Order. Specifically, SCE&G moved for an order prohibiting discovery in this case of the following: (1) information relating to dealings, if any, between SCE&G and potential new customers on Johns Island; (2) information relating to plans or proposals by SCE&G, if any, to extend additional lines on Johns Island, including but not limited to the locations of such lines, if any, and contacts with property owners, if any, to secure right-of-way for such lines; and (3) information concerning developer incentive programs and other marketing strategies which SCE&G has considered adopting.

The basis for SCE&G's motion is that it is necessary to protect persons or parties from annoyance, embarrassment, oppression, or undue burden. Furthermore, SCE&G argued that the matters involved are confidential business and commercial information which directly relate to competition between the suppliers.

On May 11, 1989, Berkeley and ECSC filed a Motion to Compel Discovery and Response to SCE&G's Motion for a Protective Order. Berkeley and ECSC argued that SCE&G failed to bring all of the subpoenaed documents to the deposition on May 8, 1989.

Specifically, Berkeley and ECSC requested that SCE&G be required to produce the following documents:

1. All work orders for the engineering, right-of-way acquisition, right-of-way clearance and construction of the electric line and all related facilities to the proposed Piggly Wiggly Shopping Center at Maybank Highway and Bohicket Road, including all budgets, including from customer service and/or system planning regarding right-of-way.
2. All estimates of engineering, right-of-way acquisition, right-of-way clearance and construction costs related to the construction and operation of the line to the Piggly Wiggly Shopping Center to be located at Maybank Highway and Bohicket Road.
3. All budgets which include amounts allocated to the construction of the Johns Island line, together with any supporting data from customer service and system planning relating to the cost of right-of-way and/or right-of-way clearance.
4. All actual costs of engineering, right-of-way acquisition, right-of-way clearance and construction costs related to the construction and operation of the line to the Piggly Wiggly Shopping Center to be located at Maybank Highway and Bohicket Road.
5. All previous 2 year plans and/or budgets for the Southern Division as they relate to right-of-way acquisition, planning, engineering and/or construction on Johns Island.
6. All 5 year plans and/or budgets or the Southern Division as they relate to right-of-way acquisition, planning, engineering and/or construction on Johns Island.
7. Each five year projection of load demand on Johns Island, including projected customers and their individual load demands.
8. Projected and/or actual assessment of revenues to be received from the proposed line constructed to the Piggly Wiggly Shopping Center for the next four years.
9. Copies of all analyses of revenue projected to be received from the proposed line constructed to the Piggly Wiggly Shopping Center when compared to costs projected and/or incurred in the planning, engineering and construction of the line.

Berkeley and ECSC argue that the above referenced documents are essential to the main issues in the case, and that they are relevant to the issue of unnecessary and wasteful duplication of services in violation of Public Service Commission regulations.

Berkeley and ECSC argue further that the Respondent, SCE&G's Motion for a Protective Order be denied for the following reasons:

1. The Motion was not timely.
2. The prerequisites for a protective order were not established. Respondent did not establish any harm that would result from the disclosure of the subject information.
3. The probative value of the documents outweighs the Respondent's desire to protect them because the documents are critical to the issue of wasteful and unnecessary duplication of services.
4. The documents are critical to the issue of whether Respondent's actions were consistent with its policies.

The Commission finds that the Motion to Compel Discovery of Berkeley and ECSC should be granted and that SCE&G's request for a Protective Order should be denied as to the items set forth in the Motion.

The Commission is cognizant of the well founded principle that the scope of discovery is very broad. At the same time, this Commission is concerned about any practices that result in unfair competitive advantages, or threatening and coercive activities against potential customers of a competing utility. The parties are admonished that such practices are inappropriate. The Commission, on the other hand, is reluctant to interfere with the

rights of parties where the issue of whether the parties have or may have a right to compete has not been heard. To accommodate the need to protect persons or parties from undue burden and the need for disclosure, the Commission has weighed the interests of both parties.

The Commission has concluded that SCE&G has not met its burden of establishing that Plaintiff's and Plaintiff-Intervenors' request is unreasonable or oppressive. However, the Commission understands the concern of SCE&G about confidential business information.

In balancing the interests of all parties, the Commission has determined that the Plaintiff's and Plaintiff-Intervenors' need to have access to documents essential to the proof of their case in chief. These documents will allow Plaintiff's and Plaintiff Intervenors' to narrow the issues and aid in the efficient presentation of issues for the hearing. SCE&G is hereby ordered to produce the documents responsive to Berkeley's and ECSC's Subpoena Duces Tecum as identified as items (1) through (9) on page 3 of this order. These documents are to be provided to the attorneys in trust to insure that the documents are used for the purposes of the South Carolina Public Service Commission Docket No. 89-64-E proceeding only. The parties shall not use any of the material provided to obtain any commercial or marketing advantage over the other party or to contact any customers of the other party. The documents produced shall be numbered and marked confidential. The documents shall not be reproduced. At the conclusion of this proceeding and any appeal therefrom, the documents shall be

returned to the party producing them.

The Commission is concerned that discovery be conducted in an orderly manner that conforms to the Rules of this Commission and the Rules of Civil Procedure. In responding to a Subpoena Duces Teucm, the parties must assure that every effort is made to comply, absent an order of this Commission to the contrary.

IT IS THEREFORE ORDERED:

1. That Berkeley Electric Cooperative's and The Electric Cooperatives of South Carolina's Motion to Compel Discovery is hereby granted.

2. That South Carolina Electric and Gas Company's Motion for a Protective Order is hereby denied.

3. That this Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Caroline S. Thayer
Chairman

ATTEST:

Anita W. Starnes
ACTING Executive Director

(SEAL)